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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/652,261
Filing Date: August 29, 2003
Appellant(s): HARRIS, FREDERICK B.

Rory D. Rankin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/03/2008 appealing from the Office action mailed 11/03/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct

(4) Status of Amendments After Final

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Dunn (U.S. Patent No. 5,945,987) published August 31, 1999

Klosterman (U.S. Patent No. 6,453,471) published September 17, 2002

Adams (U.S. Patent No. 6,378,130) published April 23, 2002

Norsworthy et al. (U.S. Patent No. 6,144,402) published November 7, 2000

Clay et al. (U.S. Patent No. 7,032,028) published April 18, 2006

Dunn et al. (U.S. Patent No. 5,861,906) published January 19, 1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8, 10-11, 15-18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn (U.S. Patent No. 5,945,987) in view of Klosterman (U.S. Patent No. 6,453,471).

Referring to claim 1, Dunn discloses a method for conveying individualized content in a distributed computer system (see Column 2, Lines 23-36).

Dunn also discloses broadcasting a plurality of modules from a server to a plurality of client devices on a single channel (see Figure 1 for a headend connected to a plurality of client devices and Column 12, Lines 48-57 for transmitting a plurality of modules from a server to a client device and Column 6, Lines 51-56 for transmitting the trailers on a single VOD channel), the plurality of modules having a unique module number (see Figure 7 and Column 9, Lines 10-29 for each trailer having a moniker/unique module number), wherein said plurality of modules are not broadcast responsive to a client request (see Column 12, Lines 17-26 for receiving default modules that are not broadcast responsive to a client request).

Dunn also discloses sending search criteria from a client device of the plurality of client devices to the server, subsequent to said broadcasting (see Column 12, Lines 19-25).

Dunn also discloses receiving the search criteria at the server and identifying a qualifying module number, which corresponds to the search criteria (see Column 12, Lines 26-32).

Dunn also discloses sending the qualifying module number to the client device (see Column 12, Lines 32-36).

Dunn also discloses receiving the qualifying module number at the client device (see again Column 12, Lines 32-36).

Dunn also discloses retrieving a first module at a client device in response to matching the received qualifying module number to said first module (see Column 12, Lines 42-57).

Dunn is silent as to a broadcast carousel being used to cyclically transmit the modules on a single channel.

Klosterman discloses broadcasting a plurality of modules in a broadcast carousel from a server to a plurality of client devices on a single channel (see carousel 902 in Figure 10 and Column 10, Lines 43-46), as well as, retrieving a first module of said modules at the client device from the single channel, in response to a unique module number (see Column 10, Lines 20-28). The examiner notes that since the plurality of modules are transmitted in a single channel of a broadcast carousel, that the modules in turn are not broadcast responsive to a client request, because the modules are continually transmitted over the single channel.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the trailer distribution system, as taught by Dunn, to include the carousel trailer distribution system, as taught by Klosterman, for the purpose of requiring less bandwidth to transmit multiple trailers in a single broadcast stream/channel (see Column 10, Lines 45-46 of Klosterman).

Referring to claim 2, Dunn further discloses displaying information corresponding to the first module on a display associated with said client device (see Figure 9).

Referring to claim 3, Dunn further discloses a viewer generating a video request based upon said displayed information (see step 240 in Figure 13), said video being associated with said first module (see step 236 in Figure 13 and tables 110, 118, 116 and 120 in Figures 7-8).

Dunn also discloses sending said video request to said server (see step 242 in Figure 13).

Dunn also discloses sending a video corresponding to said video request from the server to the client device (see step 246 in Figure 13).

Referring to claim 8, Dunn further discloses sending a selected advertisement associated with the search request to the client device (see step 256 in Figure 14).

Referring to claims 10, 16, 18 and 20, see the rejection of claim 1.

Referring to claims 11, 17 and 22, see the rejection of claim 3.

Referring to claim 21, see the rejection of claim 2.

Referring to claims 15, 19 and 23, see the rejection of claim 8.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn (U.S. Patent No. 5,945,987) in view of Klosterman (U.S. Patent No. 6,453,471)

Referring to claim 9, Dunn and Klosterman discloses all of the limitations in claim 1, but fails to teach that each of said programs comprise a plurality of modules (trailers).

The examiner takes Official Notice to the fact of providing multiple trailers for display to viewer, wherein the multiple trailers correspond to a single video.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the amount of trailers corresponding to a single program that are transmitted, for the purpose of allowing a viewer to select between different trailers for a movie in order to entice the viewer to further purchase the movie for viewing.

Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn (U.S. Patent No. 5,945,987) in view of Klosterman (U.S. Patent No. 6,453,471) in further view of Adams (U.S. Patent No. 6,378,130).

Referring to claim 4, Dunn and Klosterman disclose all of the limitations of claim 3, as well as Dunn further disclosing inserting the requested video in a designated channel location in a broadcast and using the designated channel location to retrieve the requested video from the broadcast at the client device (see Column 4, Line 42 through Column 5, Line 15).

Adams further discloses sending the designated channel location from the server to the client device (see Figure 7 and Column 9, Line 59 through Column 11, Line 20).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the VOD system, as taught by Dunn and Klosterman, to further transmit a message indicated the designated channel location of a requested video from a headend/server to a client device, as taught by Adams, for the purpose of

providing an improved media server interconnect from the headend to the set-tops so as to provide more on-demand service versatility and capacity at reasonable cost (see Column 6, Lines 11-14 of Adams).

Referring to claim 12, see the rejection of claim 4.

Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn (U.S. Patent No. 5,945,987) in view of Klosterman (U.S. Patent No. 6,453,471) in further view of Norsworthy et al. (U.S. Patent No. 6,144,402).

Referring to claim 5, Dunn and Klosterman disclose all of the limitations in claim 3, but fails to teach sending a broadcast time for the requested video to the client device, inserting the requested video in a broadcast at the broadcast time and retrieving the video from the broadcast at the client device at the broadcast time.

Norsworthy discloses sending a broadcast time for the requested video to the client device, inserting the requested video in a broadcast at the broadcast time and retrieving the video from the broadcast at the client device at the broadcast time (see Column 5, Lines 4-44).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the VOD/trailer system, as taught by Dunn and Klosterman, to further utilize the broadcast time transmission method, as taught by Norsworthy, for the purpose of providing an individual with the time sequence that the user would received the requested data (see Column 3, Lines 43-45 of Norsworthy).

Referring to claim 13, see the rejection of claim 5.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn (U.S. Patent No. 5,945,987) in view of Klosterman (U.S. Patent No. 6,453,471) in further view of Clay et al. (U.S. Patent No. 7,032,028).

Referring to claim 6, Dunn and Klosterman disclose all of the limitations of claim 3, but fail to teach continuously sending said video from the server until an acknowledgement of receipt is received by the server from the client device.

Clay teaches continuously sending said video from the server until an acknowledgement of receipt is received by the server from the client device (see Column 4, Lines 54-58).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the VOD/trailer system, as taught by Dunn and Klosterman, to further utilize the download completion acknowledgement message, as taught by Clay, for the purpose of providing further gains in communications efficiency can be attained (see Column 1, Lines 59-61 of Clay).

Claims 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunn (U.S. Patent No. 5,945,987) in view of Klosterman (U.S. Patent No. 6,453,471) in further view of Dunn et al. (U.S. Patent No. 5,861,906).

Referring to claim 7, Dunn and Klosterman disclose all of the limitations of claim 3, but fail to teach continuously sending said video from the server for a predetermined period of time.

Dunn ('906 Patent) teaches continuously sending said video from the server for a predetermined period of time/rental time period (see Column 11, Lines 37-53).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the VOD/trailer system, as taught by Dunn and Klosterman, to further utilize the continuously transmission of a video program during a rental time period, as taught by Dunn ('906 Patent), for the purpose of providing the tremendous benefit of flexibility (see Column 11, Lines 54-55 of Dunn ('906 Patent)) by allowing a user to view a rented video program at their leisure (see Column 11, Lines 58-59 of Dunn ('906 Patent)).

Referring to claim 14, see the rejection of claim 7.

(10) Response to Argument

1. Claims 1-3, 8, 10-11, 15-18 and 20-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,945,987 (hereinafter "Dunn"), in view of U.S. Patent No. 6,453,471 (hereinafter "Klosterman")

Applicant argues that Dunn does not disclose at least the features "retrieving a

first module of said modules at the client device from the signal channel, in response to matching the received qualifying module number to said first module" because the recited "said modules" are not broadcast responsive to a client request, whereas Dunn only discloses retrieving programs that match a search request that are also transmitted in response to the search request.

The examiner disagrees and notes that Dunn clearly teaches these limitations at Column 12, Lines 22-36. As stated in the previous Office Action, Dunn sends search criteria from the client to the server (**see Column 12, Lines 22-25**). Dunn then states that the server receives the search criteria and performs a search of the SQL database (**see Column 12, Lines 26-28**). Dunn then sends the qualifying module number to the client device (**see Column 12, Lines 31-35**), receives the qualifying module number (**see again Column 12, Lines 31-35 and note that if the qualifying module numbers are transmitted to a set-top box then they are received**) and using the qualifying module number to retrieve a first module of said modules at the client device from the single channel, in response to matching the received qualifying module number to said first module (**see Column 12, Lines 52-54 for using a qualifying module number to retrieve the proper trailer from the CMS database**).

The Examiner further notes that while Dunn teaches broadcasting a plurality of modules in a continuous loop, wherein said plurality of modules are not broadcast responsive to a client request (**see Column 12, Lines 17-19 for transmitting new release previews in a continuous loop without being response to a client request**), Dunn also discloses selecting a new group of selected trailers (**Column 12,**

lines 19-41) in response to a viewer's request, however, once a new group has been selected (v Column 12, lines 37-41), the plurality of trailers/previews/modules are transmitted, again, in a continuous loop (see Column 12, Lines 45-47 for stating, "As described above, the viewer can watch the trailers as they are presented, or skip through them at the viewer's own pace") and therefore, while a new group is initially selected and grouped for transmission based on a client's request, the actual broadcasting of the plurality of trailers/modules are not transmitted in response to a client's request (**as claimed**) because they are broadcast at a normal viewing pace until later selected for a next/previous trailer, as described in Column 12, Lines 48-56.

Dunn can access this new group of trailers in a next/previous fashion (see Column 12, Lines 48-56), however Dunn is silent about the use of a **broadcast carousel**. Therefore, while Dunn provides technology similar to a broadcast carousel, by transmitting trailers in a continuous loop, Dunn fails to teach that a **broadcast carousel** is used for a group of trailers, hence the application of the trailer carousel of Klosterman in the 103(a) rejection.

Applicant argues that Dunn does not disclose "retrieving a first module of said modules [pushed modules] at the client device from the single channel, in response to matching the received qualifying module number to said first module", as recited. The Examiner respectfully disagrees.

At Column 12, Lines 48-56 Dunn discloses retrieving a next/previous trailer/first module in response to retrieving the next/previous moniker in the queue, which is

transmitted to the headend to retrieve the next/previous trailer/module, which is transmitted over the VOD channel switched to by the STB at Column 12, Lines 9-11.

Applicant also argues that Dunn clearly discloses retrieving programs that match a search request that are transmitted in response to the search request and that the Examiner appears to agree that Dunn's trailers, one or more of which may be retrieved by the client, are broadcast responsive to a client request and therefore are not equivalent to the claimed "first module of said modules". The Examiner respectfully disagrees.

The Examiner notes that while Dunn teaches broadcasting a plurality of modules in a continuous loop, wherein said plurality of modules are not broadcast responsive to a client request (**see Column 12, Lines 17-19 for transmitting new release previews in a continuous loop without being response to a client request**), Dunn also discloses selecting a new group of selected trailers (**Column 12, lines 19-41**) in response to a viewer's request, however, once a new group has been selected (**Column 12, lines 37-41**), the plurality of trailers/previews/modules are transmitted, again, in a continuous loop (**see Column 12, Lines 45-47 for stating, "As described above, the viewer can watch the trailers as they are presented, or skip through them at the viewer's own pace"**) and therefore, while a new group is initially selected and grouped for transmission based on a client's request, the actual broadcasting of the plurality of trailers/modules are not transmitted in response to a client's request (**as**

claimed) because they are broadcast at a normal viewing pace until later selected for a next/previous trailer, as described in Column 12, Lines 48-56.

Applicant also argues that Klosterman does not teach "retrieving a first module of said modules at the client device from the single channel, in response to matching the received qualifying module number to said first module".

As stated above and in the Examiner's Final Rejection dated 11/01/2007, Klosterman is only used to teach the use of the specific broadcast transmission scheme known as a broadcast carousel.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

On pages 17-19 of the Applicant's Appeal Brief, several arguments are presented that state how the combination of Dunn and Klosterman would not result in the claimed invention, such as, "In such a combination there is no connection between the request sent by the viewer to the headend (i.e., the request for a new group of trailers in Dunn) and the retrieval of pushed modules (i.e., the selecting of a trailer for preview from a list in Klosterman)" and "In the proposed combination, Klosterman's carousel would be loaded with the trailers that were determined to have matched the

search criteria and that also would therefore be broadcast in response to a request, unlike the recited first module that is not broadcast responsive to client request”.

The Examiner again notes that Klosterman is only used to teach the use of the specific broadcast transmission scheme known as a broadcast carousel and is not concerned with how the plurality of modules and the first module is being retrieved, because as stated in the Final Rejection dated 11/01/2007 and the Examiner's rebuttal above, Dunn is used to teach these limitations.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to the arguments presented by Applicant on the 1st Paragraph of Page 20, see the Examiner's rebuttal above.

Applicant also argues that Dunn does not teach advertisements. The Examiner notes that a trailer for a full-length movie (**see Column 1, Lines 14-24**) is an advertisement for the full-length movie, which is used to entice a viewer to order the full-length VOD movie.

Items 2-6

Regarding items 2-6 in the Applicant's arguments section of the Appeal Brief, see the Examiner's rebuttal above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jason Salce

/Jason P Salce/

Primary Examiner, Art Unit 2421

February 11, 2009

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